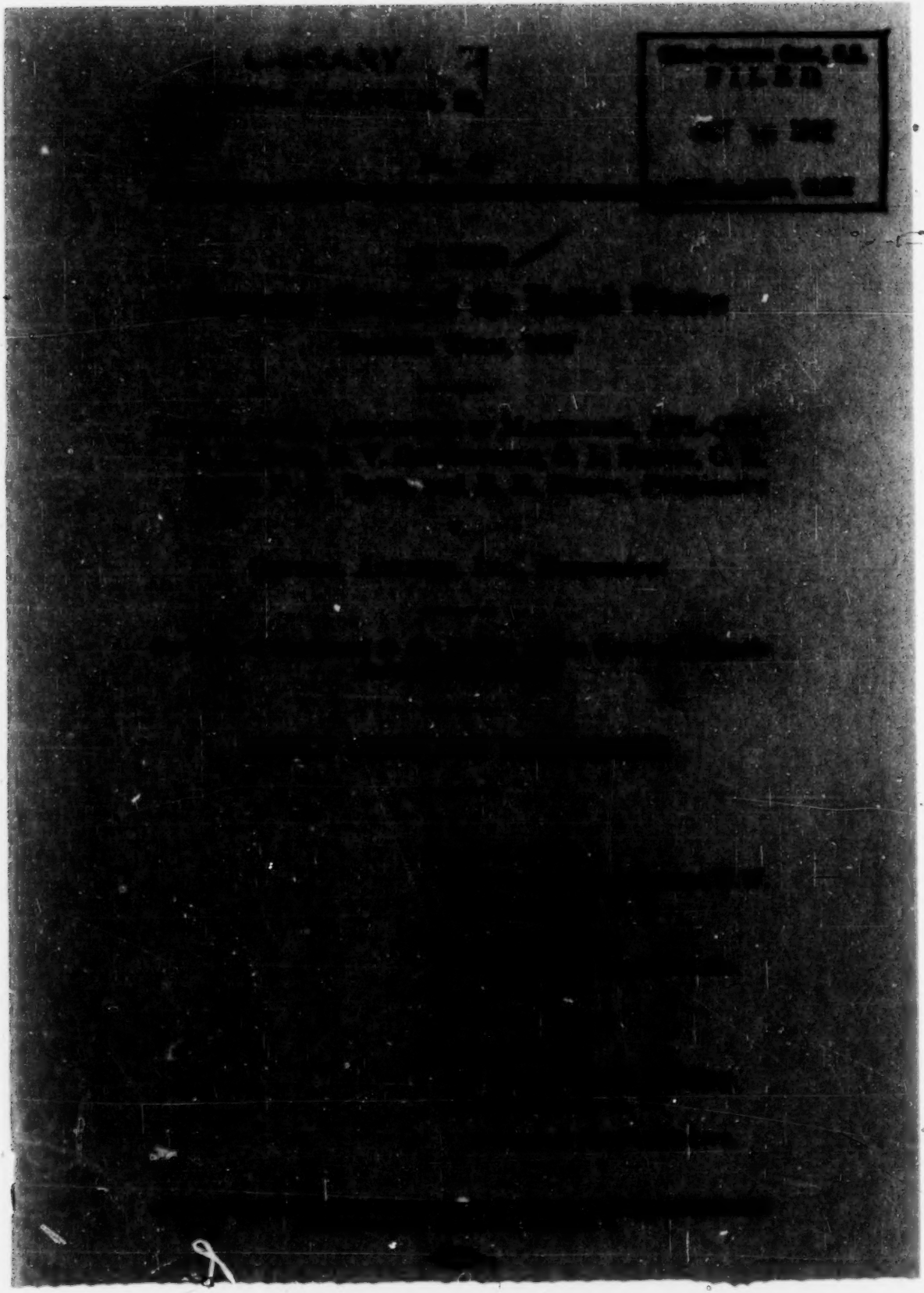

INDEX

Page

I. Jurisdiction Exists Under 28 U.S.C. § 1337, So That an Inquiry Into the Sufficiency of the Allegation of the Jurisdictional Amount for the Purpose of 28 U.S.C. § 1331 Is Irrelevant; the Jurisdictional Amount Is in Any Event Adequately Alleged and Any Defect Can Be Cured by Amendment 1

II. There Is No Merit to the Contention that Federal Question Jurisdiction Does Not Exist Because the Right Asserted Is Said To Be Based on "Federal Common Law" and "Not Federal Statutory Law" 8

III. Description of the Action as One on a Contract or to Enforce a Contract Right Does Not Detract From Its Character as an Action Arising Under the Railway Labor Act 11

AUTHORITIES CITED

CASES:

American Federation of Labor v. Watson, 327 U.S. 582 2

Appalachian Coals v. United States, 288 U.S. 344 9

Barnhart v. Western Maryland R. Co., 128 F. 2d 709 (C.A. 4), cert. denied, 317 U.S. 671 12

Conley v. Gibson, 355 U.S. 41 ..... 4, 12

Division 525, Order of Railway Conductors v. Gorman, 133 F. 2d 273 (C.A. 8) 7

Friedman v. I.A.M., 220 F. 2d 808 (C.A.D.C.) cert. denied, 350 U.S. 824 5

Hartford Fire Ins. Co. v. Bonner Mercantile Co., 56 F. 378 (C.A. 9), cert. denied, 154 U.S. 504 7

Hayes v. Union Pac. R. Co., 184 F. 2d 337 (C.A. 9) .. 12

Hettenbaugh v. ALPA, 189 F. 2d 319 (C.A. 5) 12

Horton v. Liberty Mutual Ins. Co., 367 U.S. 348 5

Hughes v. Superior Court, 339 U.S. 460 11

Local Union No. 497 v. Poplin & P. Ry. Co., 287 F. 473 (C.A. 8) 6

MacArthur Liquors, Inc. v. Palisades Citizens Ass'n., 265 F. 2d 372 (C.A.D.C.) 4

N.A.A.C.P. v. Alabama, 357 U.S. 449 4

	Page
Norton v. Larney, 266 U.S. 511	3
Pennsylvania R. Co. v. Day, 360 U.S. 548	11
Republic Aviation Corp. v. N.L.R.B., 327 U.S. 793	9
Retail Clerks International Ass'n v. Lion Dry Goods, 369 U.S. 17	4
Shelly v. Kraemer, 334 U.S. 1	11
Shields v. Thomas, 17 How. 3	6
Starke v. N.Y. Chi. & St. L. R. Co., 180 F. 2d 569 (C.A. 7)	12
Sun Printing and Publishing Ass'n v. Edwards, 194 U.S. 377	3
Tennessee Electric Power Co. v. T.V.A., 306 U.S. 117	4
Texas & N.O.R. Co. v. Brotherhood of Railway Clerks, 281 U.S. 548	12
Textile Workers Union v. Lincoln Mills, 353 U.S. 448	8
Tunstall v. Brotherhood of Locomotive Firemen, 323 U.S. 210	9
Union Pac. R. Co. v. Price, 360 U.S. 601	14
United States v. Standard Oil Co., 332 U.S. 301	11
United Steelworkers v. Enterprise Wheel and Car Corp., 363 U.S. 593	4
West v. American Tel. & Tel. Co., 311 U.S. 223	11
Yakus v. United States, 321 U.S. 414	9
STATUTES:	
Labor Management Relations Act, 1947 Section 301(a)	8
Railway Labor Act Title I, Section 3, First (m)	13, 14
Title I, Section 3, Second	14
28 U.S.C. § 1331	1, 2, 3, 11
28 U.C.C. § 1337	2, 3, 9
28 U.S.C. § 1343(3)	2
28 U.S.C. § 1653	8
Judicial Code § 24(1), 28 U.S.C. § 41(1)	2, 3
Judicial Code § 24(8), 28 U.S.C. § 41(8)	2, 3, 9
Judicial Code § 24(14), 28 U.S.C. § 41(14)	2, 3
MISCELLANEOUS:	
Mishkin, *The Federal "Question" In The District Courts* 53 Col. L. Rev. 157 (1953)	10
Moore's Federal Practice, 890-891 (1961)	5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 61

INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, R. K. DOUD, S. V. CORNSTUBBLE, O. L. BROOM, C. R. CASEY, P. R. DAVIS, and E. E. FUQUA, *Petitioners*

v.

CENTRAL AIRLINES, INC., *Respondent*

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

REPLY BRIEF FOR PETITIONERS

I. Jurisdiction Exists Under 28 U.S.C. § 1337, So That An Inquiry Into the Sufficiency of the Allegation of the Jurisdictional Amount for the Purpose of 28 U.S.C. § 1331 Is Irrelevant; the Jurisdictional Amount is in Any Event Adequately Alleged and Any Defect Can Be Cured By Amendment

Respondent contends that the complaint alleges jurisdiction solely under 28 U.S.C. § 1331; that the jurisdictional averment under 28 U.S.C. § 1331 is defective in that it fails to allege that the matter in controversy as to each individual employee-plaintiff exceeds

$10,000; and that consideration of the District Court's jurisdiction should be confined to this single ground and the judgment affirmed based on it (Pet. br. pp. 4, 7-9, 19, 47). We shall show, first, that the allegations of the complaint indisputably establish jurisdiction under 28 U.S.C. § 1337 so that the District Court's jurisdiction is inescapably well-founded; and second, apart from the corresponding utter irrelevancy of respondent's contention pertaining to 28 U.S.C. § 1331, that contention is in any event without merit.

1. The complaint in its entirety amply alleges every fact essential to show jurisdiction under 28 U.S.C. § 1337. The omission of a formal averment invoking 28 U.S.C. § 1337 by name of course does not matter. The point is settled and exemplified by this Court's decision in *American Federation of Labor* v. *Watson*, 327 U.S. 582, 589-591. The complaint in that case alleged jurisdiction solely under Judicial Code § 24(1), 28 U.S.C. § 41(1) (now 28 U.S.C. § 1331), and Judicial Code § 24(14), 28 U.S.C. § 41(14) (now 28 U.S.C. § 1343(3)).[1] There was no allegation of jurisdiction under Judicial Code § 24(8), 28 U.S.C. § 41(8) (now 28 U.S.C. § 1337). The three-judge District Court found jurisdiction to exist under § 24(1) and § 24(14) of the Judicial Code as alleged in the complaint.[2] The finding of jurisdiction under § 24(1) was not contested by any party on the appeal to this Court.[3] Nevertheless, despite the absence of a challenge to the finding of jurisdiction under § 24(1) and the absence of an allegation

---

[1] Record, p. 3, *American Federation of Labor* v. *Watson*, 327 U.S. 582, October Term 1945, No. 448.

[2] *Id.*, pp. 205, 209-210.

[3] 327 U.S. at 590.

of jurisdiction under § 24(8), this Court *sua sponte* disclaimed reliance on § 24(1) or § 24(14) and predicated jurisdiction on § 24(8). This Court stated that: "We do not pass on the question whether the District Court had jurisdiction under § 24(1) or § 24(14) of the Judicial Code. For it is the view of a majority of the Court that jurisdiction is found in § 24(8) of the Judicial Code, . . . which grants the federal district courts jurisdiction of all 'suits and proceedings under any law regulating commerce.'" 327 U.S. at 591. The court below was therefore wholly correct in independently raising and considering the existence of jurisdiction under 28 U.S.C. § 1337 notwithstanding the absence of a formal averment in the complaint invoking it by name (R. 41, n. 1).[4]

2. Respondent's contention that the jurisdictional amount requisite to 28 U.S.C. § 1331 is inadequately alleged is therefore utterly irrelevant. It is in any event without merit. The premise of the contention is that the claim of each of the six individual employee-plaintiffs is separate and distinct; that there is no sufficient allegation that as to each of these several plaintiffs the matter in controversy exceeds $10,000; and that these several claims cannot be aggregated to make up the requisite amount. Analysis discloses the numerous fallacies in this contention.

---

[4] In this case, all that is lacking is the formal averment, every fact essential to show jurisdiction under 28 U.S.C. § 1337 being amply alleged. Official Form 2(c) of the Federal Rules of Civil Procedure, pertaining to 28 U.S.C. § 1337, does not require that 28 U.S.C. § 1337 shall be invoked by name. Indeed, even where the complaint is deficient in alleging an essential jurisdictional element, jurisdiction is still well-founded if the requisite element is otherwise shown in the record. *Norton* v. *Larney*, 266 U.S. 511; *Sun Printing and Publishing Ass'n* v. *Edwards*, 194 U.S. 377.

(a) The threshold fallacy is that the contention disregards the position of the Union as a plaintiff. The Union has an unquestionable justiciable interest in the enforcement of the award.[5] The complaint seeks a judgment "ordering defendant to comply with said award . . ." (R. 4). The award sustains the grievances of six named employees and provides that "They are entitled to reinstatement without loss of seniority and should be made whole for any loss of pay involved . . ." (R. 26). The award thus requires the restoration of six jobs, the attaching seniority, and the lost earnings, and no one doubts that the worth of these in totality

---

[5] Respondent's suggestion that the Union is not a proper party to the action is frivolous (Resp. br. pp. 2-3, 13). The Union is the exclusive bargaining representative of the employees; the Union and the carrier negotiated and are the parties to the collective bargaining agreement; the Union and the carrier established the system board of adjustment; only the Union or the carrier may submit a dispute to the board (R. 5-6, 7) and only the Union or the carrier may petition the National Mediation Board for appointment of a neutral to sit with the board when the board deadlocks over a dispute (R. 8); the Union is under a duty to administer the agreement and the machinery for its enforcement fairly and impartially on behalf of the employees (*Conley* v. *Gibson*, 355 U.S. 41, 46-47); and the award at issue in this case eventuated from the Union's action invoking and carrying through these processes. The Union's interest in maintaining the integrity of its agreement and the means for its enforcement (*Tennessee Electric Power Co.* v. *T.V.A.*, 306 U.S. 117, 137), and its nexus with the employees it represents (*N.A.A.C.P.* v. *Alabama*, 357 U.S. 449, 458-460; *MacArthur Liquors, Inc.* v. *Palisades Citizens Ass'n*, 265 F. 2d 372, 374 (C.A.D.C.)), confer standing upon it to bring an action to enforce the award. See *United Steelworkers* v. *Enterprise Wheel and Car Corp.*, 363 U.S. 593, in which the union brought an action to enforce an award requiring the reinstatement of employees with back pay, and *Retail Clerks International Ass'n* v. *Lion Dry Goods*, 369 U.S. 17, in which the union brought an action to enforce two arbitration awards, one of which required the reinstatement of two employees to particular jobs.

"exceeds the sum or value of $10,000, exclusive of interests and costs. . . ."[6] The jurisdictional amount is thus easily satisfied by the value of the whole of the award. The "matter in controversy" is the whole of the award. The Union's interest extends to the whole of the award. It is not a divisible interest apportionable on the basis of each individual employee's personal pecuniary stake in the award. Had respondent brought an action in the District Court to set aside the award, the jurisdictional amount would have been determined and satisfied by the liability imposed by the award in its entirety. The jurisdictional amount is not less because the Union brings an action to enforce the award rather than respondent to set it aside. "No matter which party brings it into court, the controversy remains the same; it involves the same amount of money and is to be adjudicated and determined under the same rules. Unquestionably, therefore, the amount in controversy is in excess of $10,000." *Horton* v. *Liberty Mutual Ins. Co.*, 367 U.S. 348, 354.

(b) Disregarding the Union as a plaintiff, and considering only the six individual employees as plaintiffs, the result is no different. "Where . . . several plaintiffs unite to enforce an 'integrated' or 'undivided' right, it is the value of the entire right which is in controversy and this total value is used, when pertinent, in determining whether or not federal jurisdiction exists."[7] The "matter in controversy" is determinative. Here the matter in controversy is the award. The six individual plaintiffs have a completely unitary interest in the award. It is the single source of an identic claim.

---

[6] *Cf.*, *Friedman* v. *I.A.M.*, 220 F. 2d 808 (C.A.D.C.), cert. denied, 350 U.S. 824.

[7] 1 Moore's Federal Practice, 890-891 (1961).

If the award is valid, they prevail together; if the award is invalid, they fall together. And the award is valid or invalid upon grounds common to each. Theirs is a joint and undivided interest in the validity of the award. *Shields* v. *Thomas*, 17 How. 3.

The soundness of this analysis is confirmed by authority. In *Local Union No. 497* v. *Joplin & P. Ry. Co.*, 287 F. 473 (C.A. 8), a local union and its officers, on behalf of the union members collectively, brought an action to recover $7,271.47, alleging that this sum was due to the employees as wages based on the legal effect of the findings and order of a court of industrial relations. The requisite jurisdictional amount was found to exist in reliance upon the aggregated demand of $7,271.47, although no individual employee was due more than $100. The court explained that (287 F. at 475-476):

> This action is brought by or on behalf of the employees, members of the union, collectively to recover the amount alleged to have been in effect adjudged to be due to them by the finding and order of the industrial court of April 23, 1920. This action was and is founded on that finding and order. The plaintiffs alleged in their complaint, and the defendant denied in its answer, and still denies, that that finding and order in effect adjudged that the defendant owed and shall pay to the employees, the members of the union, collectively, $7,271.47, and this was and is the sole matter in controversy between them in this action. This action presents no controversy between them as to the share of this amount to which any of the union employees is or will be entitled, or as to the amount owing to him individually. The only controversy between the plaintiffs and the defendant is whether or not by reason of the order and finding of the

> industrial court the defendant was in legal effect adjudged to pay the plaintiffs the $7,271.47, or any of it.

In *Hartford Fire Ins. Co.* v. *Bonner Mercantile Co.*, 56 F. 378 (C.A. 9), cert. denied, 154 U.S. 504, a number of insurance companies combined to set aside an award of arbitrators finding that the loss to the insured from a fire was $60,624.73. The requisite jurisdictional amount was found to exist even as to those insurance companies whose proportionate liability for the total loss was standing alone less than the jurisdictional amount. The court explained that (56 F. at 383):

> The award arose out of the common agreement of all the insurers. The object of the suit is to set it aside upon allegations and evidence common to all parties assailing the same. . . . The subject in controversy, therefore, is the validity of the award, —shall the award stand, or shall it be set aside,— and the amount in controversy must be held to be the amount of the award, which is the subject of the suit.

As with the findings and order of the industrial relations court adjudging wages due, and as with the award determining total fire loss, so here, it is the award in its entirety which is the "matter in controversy" and which in its entirety is therefore determinative of the existence of the jurisdictional amount. See also, *Division 525, Order of Railway Conductors* v. *Gorman*, 133 F. 2d 273, 275-276 (C.A. 8).

(c) Finally, even if it were true that the jurisdictional amount must be separately alleged as to each individual employee-plaintiff and that the complaint is defective in this regard, the single proper course would be to grant petitioners leave to amend the complaint to allege this element. This claimed defect is

asserted for the first time in this Court so that petitioners have had no previous occasion to address themselves to it. As respondent states, it "makes no claim that this was raised in the Trial Court or that the Trial Court dismissed on this ground" (Res. br. p. 8). Were petitioners required to do so, they could in good faith allege that the jurisdictional amount is separately involved as to each of them. Assuming the materiality of the allegation, therefore, leave to amend should be granted. "Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts." 28 U.S.C. § 1653.

II. There Is No Merit to the Contention That Federal Question Jurisdiction Does Not Exist Because the Right Asserted Is Said to be Based on "Federal Common Law" and "Not Federal Statutory Law"

Respondent contends that federal question jurisdiction does not exist because the federal right asserted here is based on "federal common law" and "not federal statutory law" (Res. br. pp. 19-27). But since the claim is founded on the Railway Labor Act, respondent can only relevantly mean that a claim does not arise under federal law if it rests on judicial elaboration of the basic statutory command. This view is quite mistaken. A claim founded on section 301(a) of the Labor Management Relations Act, 1947, is one "arising under" federal law even though its content derives from exercise of the authority Congress conferred on the "federal courts to fashion a body of federal law for the enforcement of these collective bargaining agreements. . . ." *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, 451. Judicial amplification is part and parcel of the Railway Labor Act as well. Thus, the duty of fair representation imposed by that act upon a labor organization in the exercise of its

exclusive bargaining authority is not expressed in terms by the statute but is read into it. Complaint of violation of this duty asserts "a federal right implied from the statute and the policy which it has adopted. It is the federal statute which condemns as unlawful the . . . [bargaining representative's] conduct. 'The extent and nature of the legal consequences of this condemnation, though left by statute to judicial determination, are nevertheless to be derived from it and the federal policy which it has adopted.' * * * *The case is therefore one arising under a law regulating commerce of which the federal courts are given jurisdiction by 28 U.S.C. § 41(8), Judicial Code § 24(8) [now 28 U.S.C. § 1337]. . . .*" *Tunstall* v. *Brotherhood of Locomotive Firemen*, 323 U.S. 210, 213 (emphasis supplied).

It is of the essence of law-making that Congress prescribes the basic command and commits its elaboration to others. *Yakus* v. *United States*, 321 U.S. 414, 423-427.[8] Although the statute is thus infused with

---

[8] Speaking of the Sherman Anti-Trust Act, this Court observed that, "As a charter of freedom, the Act has a generality and adaptability comparable to that found to be desirable in constitutional provisions. It does not go into detailed definitions which might either work injury to legitimate enterprise or through particularization defeat its purposes by providing loopholes for escape. The restrictions the Act imposes are not mechanical or artificial. Its general phrases, interpreted to attain its fundamental objects, set up the essential standard of reasonableness." *Appalachian Coals* v. *United States*, 288 U.S. 344, 359-360.

Speaking of the National Labor Relations Act, this Court stated that it "did not undertake the impossible task of specifying in precise and unmistakable language each incident which would constitute an unfair labor practice. On the contrary that Act left to the Board the work of applying the Act's general prohibitory language in the light of the infinite combinations of events which might be charged as violative of its terms." *Republic Aviation Corp.* v. *N.L.R.B.*, 324 U.S. 793, 798.

content and scope by interpretation it is still the statute upon which the claim is founded. It would be impossible to divide a statute from its interpretation so as to say that a claim is outside the reach of federal question jurisdiction because it is based on judicial determination of the implications of the statute and not on the statute unaided by construction—an altogether artificial and unmanageable bifurcation. Federal question jurisdiction rests on no such unreal foundation, as is plain from the most restrictive formulation of its scope (Mishkin, *The Federal "Question" In The District Courts*, 53 Col. L. Rev. 157, 165 (1953)):

> The first formulation of the requirement developed by the courts is that the plaintiff must be contending that a federally ordained rule specifically creates his cause of action. Any national source will suffice, whether Constitution, treaty or law. Indeed, he need not maintain ever that some piece of national legislation provides, in so many words, the governing rule of substance; if it is his position that his right to relief is granted by federal common law, whether in connection with a statute or otherwise, jurisdiction in the national trial courts will be supported. But, regardless of the specific form in which he finds his federal authority, it must—according to him, at least—establish his substantive right to a remedy; or, characterized briefly, his claim must be founded "directly" upon national law.

In short, a claim arises under the Railway Labor Act and is hence within the reach of federal question jurisdiction even though the governing rule in support of the claim is shaped by judicial amplification of the congressional command.[9]

---

[9] Since the federal right asserted here is based on the Railway Labor Act, we have no occasion to consider the status of a federal rule created by federal courts in the absence of an applicable Act

III. Description of the Action As One on a Contract or to Enforce a Contract Right Does Not Detract From Its Character as an Action Arising Under the Railway Labor Act

In an attempt to show that the action does not arise under the Railway Labor Act, respondent intertwines two arguments: (1) This is an action to enforce an award; an action to enforce an award in an action on a contract; ergo, it does not arise under the Railway Labor Act. (2) This is an action for reinstatement and back pay based on wrongful discharge; protection against wrongful discharge is conferred by contract;

---

of Congress (*United States* v. *Standard Oil Co.*, 332 U.S. 301), other than to mention that the source of a federal right in such federal common law would appear to make no difference to the applicability of 28 U.S.C. § 1331. For 28 U.S.C. § 1331 speaks of a "matter in controversy" which "arises under the . . . laws . . . of the United States," and a federal rule enunciated by the judicial branch would seem to be as much a law of the United States as that promulgated by the legislative branch. *Cf.*, *Shelley* v. *Kraemer*, 334 U.S. 1, 14-18; *Hughes* v. *Superior Court*, 339 U.S. 460, 466-467; *West* v. *American Tel. & Tel. Co.*, 311 U.S. 223, 236-238.

Nor is analysis advanced by the truism intermittently invoked by respondent that a claim does not arise under federal law merely because a federal question may emerge in the course of the action. In this case the governing rule in support of the claim is federally prescribed and that is the hallmark of federal question jurisdiction.

Finally, citing *Moore*, *Slocum*, and *Koppal*, respondent takes the position that the action here is controlled by state law (Res. br. pp. 22-24). Respondent misconceives the scope of these cases as the decisions of this Court show (Pet. br. p. 21, n. 7). A narrow exception in favor of an "unusual and special situation" and confined to a discharge "accepted as final by the employee" (*Pennsylvania R. Co.* v. *Day*, 360 U.S. 548, 553-554) cannot provide the rule for the usual and general situation of an action to enforce an award and in which the employees, far from accepting their discharge as final, do just the opposite and actively seek reinstatement to their jobs.

ergo, the action does not arise under the Railway Labor Act. (Res. br. pp. 28-47.)[10]

Neither formulation faces up to the issue. An action to enforce an award does not exist in limbo. Plaintiff must invoke some source of authority to show why his claim is good. Some law must be applicable to

---

[10] As with the other cases we have already discussed (Pet. br. p. 55, n. 41), the additional cases cited by respondent to support this position are not helpful. (1) In *Starke* v. *N.Y., Chi. & St. L.R. Co.*, 180 F. 2d 569 (C.A. 7), res. br. p. 37, the court correctly concluded that, in an action to enforce seniority rights allegedly granted by agreement, "Congress having specifically conferred upon the Adjustment Board the authority to hear and determine plaintiff's grievance, it is not in the absence of express language to be implied that it also intended to confer jurisdiction upon the courts" (*id.* at 573). The case would be apposite only if petitioners here had bypassed the adjustment board and sought a judicial remedy without recourse to it. (2) The same is true of *Hettenbaugh* v. *ALPA*, 189 F. 2d 319 (C.A. 5), res. br. pp. 37-38, the court observing that "Appropriate quasi-judicial tribunals have been established" for the purpose of affording "relief for breaches of performance of collective bargaining agreements" (*id.* at 321). The case does not hold that, after the quasi-judicial tribunals have acted and rendered an award, an action to enforce the award is not cognizable by a federal district court under its federal question jurisdiction. To the extent that the complaint in that case alleged a violation of the duty of fair representation in the administration of the agreement, dismissal of the complaint for lack of federal question jurisdiction was held to be wrong by this Court in *Conley* v. *Gibson*, 355 U.S. 41, and reliance upon *Hayes* v. *Union Pac. R. Co.*, 184 F. 2d 337 (C.A. 9), to support the dismissal invokes a case which this Court in *Conley* v. *Gibson* stated "was decided incorrectly" (355 U.S. at 44, n. 4). (3) *Barnhart* v. *Western Maryland R. Co.*, 128 F. 2d 709 (C.A. 4), cert. denied, 317 U.S. 671, res. br. p. 38, pertains to an agreement eventuating from the purely advisory powers of the Railroad Labor Board pursuant to the Transportation Act of 1920, and the latter Act, now repealed, had a statutory scheme fundamentally different from that which presently obtains. *Texas & N. O. R. Co.* v. *Brotherhood of Railway Clerks*, 281 U.S. 548, 560-570.

support his action. Some sovereign must prescribe what that law is. Petitioners in this case invoke the air part of the Railway Labor Act as the source of their authority to support their claim for enforcement of the award. The right to enforcement is drawn from and determined by that statute. The rule of law in support of the claim is fashioned from it. Congress is the sovereign. And so the action to enforce the award arises under the air part of the Railway Labor Act because the governing rule supporting the claim is prescribed by it. It makes no difference to the analysis if the award is pushed back to the underlying contract right which it encases and vindicates. The contract right is given efficacy by the adjustment board procedure ordained by Congress. It cannot be enforced except through that procedure. The culmination of the procedure is an award. We return therefore to the same point.

Respondent itself furnishes the clue. At the threshold of any action to enforce an award is the rule of law applicable to determine the validity of the award. According to respondent, "the agreement of the parties could not make the award of such an adjustment board more final than one by the Railway Adjustment Board, but they could make it less final . . ." (Res. br. p. 41). Thus, for the governing rule to determine the enforceability of the award in this case, respondent looks to the standard of finality prescribed by Congress under section 3 First (m) of the rail part of the Railway Labor Act for awards rendered by the National Railroad Adjustment Board. It provides that NRAB "awards shall be final and binding upon both parties to the dispute, *except insofar as they shall contain a money award*" (emphasis supplied). RLA, title I,

sec. 3 First (m); *Union Pac. R. Co.* v. *Price*, 360 U.S. 601. This is a lesser standard of finality than the parties in this case have adopted by agreement. For the agreement provides without any qualification that "a majority vote of the Board shall be final, binding, and conclusive between the Company and the Association and anyone they may represent having an interest in the dispute" (R. 8). Respondent would thus derogate from the agreement in reliance upon its view that the air part of the Railway Labor Act incorporates as the maximum permissible standard of finality the rule applicable under the rail part to awards of the NRAB. This view is mistaken. Nothing in the terms of the air part prohibits the parties from contracting for complete conclusiveness and the object of the air part to promote "prompt and orderly settlement" is enhanced by it. As the policy of the air part wholly harmonizes with the contractual standard, the statute gives effect to it. Indeed, as to the rail part itself, in acting under the authorization of section 3, second, title I, to establish a system, group, or regional board of adjustment as an alternative to proceeding before the NRAB, the rail carrier and the representative would be free to agree upon a standard of finality more conclusive than that applicable to an award of the NRAB, and one of the very reasons inducing the parties to set up a contractual board might very well be to obtain the benefits of enhanced finality not available in proceedings before the NRAB. Thus, under both the air part and the rail part, parties are free to contract that an award "shall be final, binding, and conclusive" upon all, and the statute gives effect to this compact and holds the parties to their promise. And no court in determining the finality of an award rendered by an airline system board of adjustment has ever considered subtracting

from its conclusiveness in reliance upon the lesser finality of an award of the NRAB.[11] Pet. br. p. 19, n. 6. But whether petitioners' or respondent's view of the merits of this question is correct, the presently relevant point is that both look to the Railway Labor Act as the effective source for determining the governing rule, and the content of the rule is an essential part of plaintiff's cause of action in seeking enforcement of the award. The conclusion is therefore inescapable that the action arises under the Railway Labor Act.

Respectfully submitted,

PLATO E. PAPPS
1300 Connecticut Avenue, N.W.
Washington 6, D. C.

CHARLES J. MORRIS
1601 National Bankers Life Building
Dallas 1, Texas

BERNARD DUNAU
912 Dupont Circle Building
Washington 6, D. C.

Attorneys for Petitioners.

October, 1962.

---

[11] Caution also requires us to mention that, contrary to respondent's contention (br. p. 41), parties are not free to set up an adjustment board which is not invested with full jurisdiction to adjudicate all disputes "growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions," for any lesser jurisdiction would conflict with the purpose of Congress to establish an effective adjustment procedure for the settlement of all disputes of this class.